UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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ELENA BOROKHOVICH and GENNADY BOROKHOVICH,

Plaintiffs,

-against-

BANKERS STANDARD INSURANCE COMPANY and
BANKERS STANDARD INSURANCE COMPANY
d/b/a ACE GROUP a/k/a ACE PRIVATE RISK SERVICES,

Defendants.
---x

Civil Action No. ______

COMPLAINT

Jury Trial: Yes

PLAINTIFFS, **ELENA BOROKHOVICH** and **GENNADY BOROKHOVICH** ("Plaintiffs" or the "Borokhovichs"), by their attorneys, **Pinczewski & Shpelfogel, P.C.**, complaining against the defendants, **BANKERS STANDARD INSURANCE COMPANY** and **BANKERS STANDARD INSURANCE COMPANY d/b/a ACE GROUP a/k/a ACE PRIVATE RISK SERVICES** (hereinafter collectively referred to as "Defendants"), alleges as follows:

SUMMARY

1. The Borokhovichs' home, located at 1310 Seawane Drive, Hewlett Harbor, New York 11557 (the "Premises"), was ravaged by fire on or about February 10, 2013 (the "Fire").

2. The Fire severely damaged much of the Premises' structure, as well as its expensive, custom furnishings, and its contents.

3. The Premises was insured by a policy of insurance Plaintiffs had purchased from Defendants.

4. Not only have Defendants failed to make covered payment under the Policy, they have acted and continue to act in bad faith in delaying the adjustment and payment of every portion of the Borokhovichs' insurance claim.

5. As a result of Defendants' bad faith delay in timely and fully adjusting and paying the Claim, Plaintiffs have been forced to continue to live in inadequate conditions, almost two years after the Fire.

6. Now, Defendants' delay has resulted in the Premises being condemned by the local village and faceing imminent demolition.

7. The Borokhovichs bring this action in order to recover the proceeds of the Policy they had contracted for, allowing them to rebuild their home and lives. Plaintiffs demand that Defendants be held accountable for their chronic and deliberate pattern of bad faith insurance practices.

PARTIES

8. Plaintiffs ELENA BOROKHOVICH and GENNADY BOROKHOVICH, at all times hereinafter mentioned, were and are individuals over the age of 18, residing in the State of New York, County of Nassau.

9. Defendant BANKERS STANDARD INSURANCE COMPANY is an insurance company and is a foreign corporation duly organized and existing under the laws of the State of Pennsylvania, with its principal place of business located at 436 Walnut Street, Philadelphia, Pennsylvania 24153.

10. Defendant BANKERS STANDARD INSURANCE COMPANY d/b/a ACE GROUP a/k/a ACE PRIVATE RISK SERVICES is an insurance company and is a foreign corporation

duly organized and existing under the laws of the State of Pennsylvania, with its principal place of business located at 436 Walnut Street, Philadelphia, Pennsylvania 24153.

11. Defendants are authorized to do business in the State of New York, write policies of insurance for insureds throughout the State of New York, and wrote the policy of insurance that is the subject of this action.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) in that Plaintiffs and Defendants are citizens of different states and the amount in controversy exceeds $75,000.00.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a)(2) because the loss property is located in this judicial district and the events giving rise to this action substantially occurred in this judicial district.

FACTUAL BACKGROUND

14. The Borokhovichs are married and have two children. The Borkhovichs' home was severely damaged by the effects of Super Storm Sandy ("Sandy") on October 29, 2012. Following the trauma of Sandy, with the Premises being without heat and being otherwise inadequate for daily living, Plaintiff Elena Borokhovich took the couple's two children and temporarily relocated to Florida to be in a warmer climate, while her husband presided over the insurance claims process and adequately restored their home so Elena and the children could return to the Premises. Plaintiff Gennady Borokhovich continued to reside in the Premises in order to watch over it and keep it secure.

15. On or about the evening of February 10, 2013, a portable space heater that Plaintiff Gennady Borokhovich was using to stay warm caused a Fire. The Fire and subsequent intervention by the local fire department caused widespread damage to the Premises, including but not limited to the Premises' structure, finishes, custom furniture, and personal contents.

16. Plaintiffs purchased a policy of insurance, bearing policy number 268011551 (the "Policy") from Defendants, insuring the Premises from fire damage.

17. Plaintiffs made timely payments of the premiums due under the Policy and the Policy was in full force and effect at the time of the damage complained of herein, with a term from June 5, 2012 through June 5, 2013.

18. After being timely notified of Plaintiffs' claim ("Claim"), Defendants engaged and continue to engage in a never-ending pattern of delay tactics aimed at wrongfully denying Plaintiffs the coverage they are entitled to under the Policy.

19. The Policy provided coverage of up to $2,153,000.00 for damage to the Premises and loss of its use, and up to $1,507,000.00 for damage to personal property located at the Premises.

20. The Policy provided coverage for "Additional Living Expenses" so that the Borokhovichs would be able to maintain their normal standard of living in the event a loss event rendered the Premises unfit to live in.

21. Defendants did not adjust the Claim or make payment thereunder but instead demanded to take an Examination Under Oath ("EUO") of Plaintiff Gennady Borokhovich. Defendants took Mr. Borokhovich's EUO on or about November 26, 2013.

22. The EUO, taken more than nine months after the Fire, was unfounded and unnecessary, and just but one of Defendants' innumerable delays, intentionally aimed at forcing the cash-strapped Plaintiffs to accept a meager and insufficient amount as full satisfaction for the Claim.

23. After the Fire, Plaintiffs needed to relocate as the Premises was unfit to live in. They did not have the liquid funds needed to outlay for rent for living accommodations comparable to the Premises, which they were entitled to under the Policy provision for Additional Living Expenses.

24. Defendants initially denied the Borokhovichs' claim for Additional Living Expenses by stating that the damages caused by the Fire did not trigger the Policy's loss of use provision.

25. Without funds from Defendants for Additional Living Expenses, Plaintiffs were forced to rent a small home, far beneath the size and standard of the Premises, while Defendants continued to "adjust" the Claim.

26. Plaintiffs were entitled to payment from Defendants for the cost to rent a replacement home comparable to their own.

27. Defendants waited for nearly two months after the EUO, until January 16, 2014, before writing Plaintiffs asking that they provide Claim documentation, including documentation irrelevant to the Claim and meant to harass Plaintiffs and unnecessarily complicate the Claim process.

28. On March 21, 2014, some thirteen months after the Fire, Defendants wrote to Plaintiffs advising them that they would be contacted "in the coming days" about an additional inspection of the Premises by an "independent building contractor."

29. On March 21, 2014, Defendants represented that they were still "investigation this [C]laim under a full reservation of all its rights."

30. Defendants waited until the very end of April 2014, almost *fifteen* months after the Fire, before making the *first* partial payment to Plaintiffs for Additional Living Expenses to cover their replacement rental. Not only was the payment for Additional Living Expenses not commensurate with the rental price for a property of like kind, to which Plaintiffs are entitled

under the Policy, Defendants' payment was for only seven month's rental, whereas Plaintiffs had been displaced for approximately fifteen months at that time.

31. At the end of May 2014, approximately 16 months after the Fire, Defendants issued an "advance payment" to Plaintiffs to "commence repairs on 1310 Seawane Drive."

32. Over the many months of Defendants' repeated delays and unreasonable and harassing requests from the Borokhovichs for documentation, all of which Plaintiffs painstakingly tried to cooperate with in good faith, Defendants tried to intimidate and prejudice the Borokhovichs by threatening them that it "will deem the absence of additional information or materials… as an acceptance" and Defendants' adjustment of the Claim.

33. On June 10, 2014, almost three months after it notified Plaintiffs that it would have the Premises inspected by an independent contractor, Defendants' contractor, Greg Wood, conducted an inspection to determine the scope of damage to the structure of the Premises. Most, if not all, of the custom furniture that was damaged as a result of the Fire was on the Premises site at the time of Mr. Wood's inspection yet Mr. Wood did not inspect said furniture.

34. Defendants subsequently issued a report, purportedly prepared by Mr. Wood, in which Defendants concluded that the damage to the Premises structure amounted to approximately half of the Plaintiffs' estimated damages for same.

35. In June 2014, Plaintiffs notified Defendants that they had located a rental that would provide acceptable living accommodations, comparable to the Premises, and asked Defendants to confirm that it would make payment for the replacement rental.

36. Defendants continued their pattern of unreasonable delay, refusing to confirm that it would cover the replacement rental until it was too late and the rental property that the

Borokhovichs had procured was no longer available, despite Plaintiffs' repeated entreaties that they needed Defendants' response or they would risk losing the rental.

37. In August 2014, Defendants finally issued partial payment for some of Plaintiffs' personal contents, along with an estimate of items. The estimate blatantly omitted numerous items submitted by Plaintiffs. Plaintiffs alerted Defendants to its adjusting omission and, despite repeated requests by Plaintiffs, Defendants have yet to revise their adjustment or advise Plaintiffs of the reason(s) for the omissions.

38. In August 2014, seventeen months after the Fire, Defendants requested, *for the very first time*, to inspect the custom furniture "millwork" that had been damaged by the Fire and its aftermath. Not only was this the first instance in which Defendants demanded an inspection of the millwork, but they had numerous previous opportunities to do so, including on June 10, 2014, when Mr. Wood inspected the Premises. (See ¶ 33, infra).

39. On October 6, 2014, Defendants' contractor, Robert Lord, inspected the millwork and issued a report dated the same day, which understated the replacement cost for the damaged millwork. Incredibly, whereas the most serious damage took place in the Borokhovichs' daughter's room, Mr. Lord's report completely omitted that room from the estimate. Despite being notified by Plaintiffs of their daughter's room's omission from Mr. Lord's estimate, Defendants have yet to revise the estimate to include it.

40. Also on October 6, 2014, Mr. Wood, Defendants' contractor who had previously inspected the Premises on June 10, 2014 to evaluate the extent of the damage, re-inspected the Premises; Mr. Wood subsequently issued a report with revised damages figures, upward adjusting his previous estimate to almost the exact figures submitted by the Borokhovichs' contractor for the cost of repair. Mr. Wood's revised report, dated October 16, 2014, was

produced to Plaintiffs on November 5, 2014, but to date Defendants have not made the additional payment due under their *own* contractor's estimate.

41. From the Claim's inception through the current day, Defendants have continuously and unreasonably delayed and procrastinated the adjustment and payment process of this Claim, finding every opportunity to filibuster and hinder the resolution of the Claim.

42. Defendants' intentional bad-faith conduct in unreasonably delaying and/or denying portions of the Claim has not only left Plaintiffs without the ability to rehabilitate their home and move back into it, but also leaves them with the prospect of having their home destroyed.

43. By letter dated August 1, 2014, the Village of Hewlett Harbor (the "Village") notified the Borokhovichs that the Premises had been condemned and would razed due to its remaining in unrepaired condition for such an extended period of time, and advising the Borokhovichs that they will be responsible for all of the Village's costs and expenses incurred in connection with the condemnation and demolition, including the Village's own attorney fees.

44. The Borokhovichs promptly notified Defendants of the Village's letter, pleading with them to resolve the claim so the Plaintiffs could attempt to rehabilitate the Premises and avoid further action by the Village.

45. Notwithstanding the Borokhovichs' repeated entreaties, Defendants did nothing. Instead, they waited until October 6, 2014 to have Mr. Wood re-inspect the Premises and revise his report.

46. Without the funds necessary to adequately repair the damage to their home, the Borokhovichs are faced with its impending demolition.

47. After going through the effects of Hurricane Sandy and then having their home and possessions destroyed by the Fire, the Borokhovichs have been forced to live in sub-par

conditions for almost two years as Defendants slowly wind their way, without course, through their never-ending "adjustment" of the Claim, in what is, at best, an intentional tactic of delay and underpayment aimed at exhausting the Plaintiffs to the point of simply accepting Defendants' underpayment and lack of payment of insured losses.

48. Finally, due to Defendants' inexcusable bad-faith delay, the Borokhovichs stand to lose their home to their village's condemnation of the Premises, a development that resulted proximately and consequentially, and foreseeably to Defendants, from the close to two-year delay in repairing the Premises.

49. It is inconceivable that Defendants could take the hefty insurance premiums paid by the Borokhovichs for years yet blatantly, recklessly and intentionally, retard the Claim's adjustment and payment, while knowing full-well of the catastrophic, consequential damages to the Borokhovichs that would result therefrom.

50. In addition to the compensatory and consequential damages suffered by the Borokhovichs, and in order to deter other insurance companies from engaging in bad faith insurance practices and denials, Defendants should be punished through the imposition of punitive damages against them. It is only through being held accountable for their fraud and misconduct that Defendants and others similarly inclined will refrain from acting in bad faith in wrongfully denying insureds' claims.

AND AS FOR THE FIRST CAUSE OF ACTION
BREACH OF CONTRACT

51. Plaintiffs hereby incorporate by reference as if fully set forth herein all of the preceding paragraphs.

52. Plaintiffs and Defendants entered into a contract when Plaintiffs purchased, and Defendants issued, the Policy.

53. The Policy provided coverage to Plaintiffs for physical damage to the Premises and its contents, as well as for Additional Living Expenses, caused by Fire.

54. Plaintiffs fully performed under the contract by paying all premiums and cooperating with Defendants regarding the Claim. Plaintiffs complied with all conditions precedent to their recovery herein, including appropriate and adequate demands, or Defendants waived or excused such conditions precedent.

55. Defendants failed to perform and materially breached the insurance contract when they wrongfully failed to pay and refused to reimburse Plaintiffs the monies they are owed for damaged to the Premises and its contents, and for Additional Living Expenses.

56. As a result of Defendants' breaches of contract, Plaintiffs suffered damages.

AND AS FOR THE SECOND CAUSE OF ACTION
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

57. Plaintiffs hereby incorporate by reference as if fully set forth herein all of the preceding paragraphs.

58. Every contract contains the implied covenant of good faith and fair dealing, by which the contracting parties agree to act in good faith and deal fairly with one another, and abstain from engaging in bad faith and unfair dealing that would deprive the other party of the benefits of the insurance contract or cause undue hardship or harm. It also requires an insurer, inter alia, to investigate claims in good faith and to reasonably and promptly pay covered claims.

59. As described above and throughout this Complaint, Defendants repeatedly acted in bad faith in the administration and denial of Plaintiffs' Claim.

60. As a result of Defendants' breach of the implied covenant of good faith and fair dealing, Plaintiffs suffered damages.

DAMAGES

61. Plaintiffs were denied their legitimate claim for policy benefits, resulting in a loss in excess of $750,000.00.

62. By virtue of their various breaches of contract, including their failure to fully reimburse the Borokhovichs for their covered losses, Defendants are liable and owe Plaintiffs for the actual damage the sustained as a foreseeable and direct result of the breach, all costs associated with recovering, repairing and/or replacing the covered properties, together with interest and all other damages Plaintiffs may prove as allowed by law. Plaintiffs are entitled to compensatory and consequential damages, in an amount to be determined at trial, together with pre- and post-judgment interest at the maximum rate allowable by law.

JURY DEMAND

63. Plaintiffs demand a trial by jury in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court order relief in their favor and further request judgment against Defendants as follows:

A. Finding Defendants liable for breach of contract and for breach of the implied covenant of good faith and fair dealing;

B. Declaring that Defendants acted in bad faith in its investigation, administration, and denial of Plaintiffs' Claim;

C. Declaring that Plaintiffs are entitled to be compensated from the time of loss in the amount equal to the market rental value of their property or one of like kind;

D. Awarding to Plaintiffs compensatory and consequential damages against Defendants, in an amount to be determined at trial, together with pre- and post-judgment interest at the maximum rate allowable by law;

E. Awarding to Plaintiffs punitive damages against Defendants;

F. Awarding to Plaintiffs the costs and disbursements of this action, including the award of reasonable fees and expenses of Plaintiffs' counsel and experts; and

G. Granting Plaintiffs such other relief as this Court deems just and proper.

Dated: December 9, 2014

PINCZEWSKI & SHPELFOGEL, P.C.

/s/ Mitchell B. Shpelfogel

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